

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OMAR NEWTON WILSON,

Plaintiff,

-against-

NEW YORK SOCIETY FOR THE RELIEF OF THE
RUPTURED AND CRIPPLED, MAINTAINING THE
HOSPITAL FOR SPECIAL SURGERY,

Defendant.

ANALISA TORRES, District Judge:

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22 Civ. 9207 (AT)

ORDER

Before the Court is the Report and Recommendation (“R&R”), ECF No. 29, from the Honorable James L. Cott, recommending that Defendant’s motion to dismiss be granted without prejudice to Plaintiff’s right to file for leave to amend the complaint in accordance with the R&R.

On October 27, 2022 Plaintiff *pro se*, Omar Newton Wilson, filed this action against his former employer, New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery (“Defendant”), alleging religious discrimination under Title VII of the Civil Rights Act of 1964 (“Title VII”), the New York State Human Rights Law (“NYSHRL”), and the New York City Human Rights Law (“NYCHRL”) based on Defendant’s denial of Wilson’s request for a “religious exemption from taking the Coronavirus vaccine.” Compl. at 5, ECF No. 2.

After careful consideration, Judge Cott issued the R&R, proposing that the Court grant Defendant’s motion to dismiss Wilson’s NYSHRL and NYCHRL claims for lack of subject matter jurisdiction, but without prejudice to Wilson repleading “facts, if there are any, that would give rise to a religious discrimination claim under Title VII.” R&R at 8, 13. Despite notification of the right to object to the R&R, no objections were filed, and the time to do so has passed. *Id.* at 13–14; ECF No. 33 (letter from Wilson conceding he did not file an “opposing response”); *see* Fed. R. Civ. P. 72(b)(2).

Instead, Wilson filed a letter, providing a recent decision of the New York Appellate Division, Fourth Department. ECF No. 32 (citing *Med. Pros. for Informed Consent v. Bassett*, 197 N.Y.S.3d 785 (App. Div. 2023)). In *Bassett*, the Fourth Department dismissed as moot a challenge to a state regulation mandating that hospitals and other covered entities require certain personnel to be fully vaccinated against COVID-19 unless they fall within the regulation’s medical exemption. 197 N.Y.S.3d at 787–88. The panel reached this decision following the State’s decision not to enforce the regulation and the regulation’s subsequent repeal. *Id.* at 787.

Even if the Court construes Wilson’s notice of supplemental authority as an objection

to the R&R, however, Wilson’s argument is not a “new argument” meriting de novo review. *See McDonough v. Astrue*, 672 F. Supp. 2d 542, 548 (S.D.N.Y. 2009). Wilson cited the trial court’s decision in *Bassett* in his original opposition brief, *see* ECF No. 25 at 2, and Judge Cott addressed the case in the R&R. R&R at 12. Judge Cott found that (1) “regardless of the current status of [the vaccine mandate], the regulation was in effect at the time of Wilson’s request for a religious exemption, and it therefore would have been an undue hardship for Defendant to comply with his request”; (2) “Wilson’s suggestion that Defendant could have accommodated him as it did ‘many staff members that were converted to off-site work during the covid Pandemic’ . . . lacks merit;” and (3) “Wilson has otherwise failed to make out a prima facie case for religious discrimination.” *Id.* (citation omitted).

Accordingly, the Court reviews the R&R for clear error. *See Whitley v. Bowden*, No. 17 Civ. 3564, 2019 WL 1953941, at *1 (S.D.N.Y. May 1, 2019). The Court finds no clear error and specifically, affirms Judge Cott’s finding as to the regulation at issue in *Bassett* and its bearing on the instant case.

Accordingly, the Court ADOPTS Judge Cott’s R&R in its entirety. Defendant’s motion to dismiss is GRANTED. Plaintiff may file an amended complaint by **January 12, 2024**, repleading only his Title VII claim. The Clerk of Court is directed to enter judgment consistent with this order and the R&R.

SO ORDERED.

Dated: December 13, 2023
New York, New York



ANALISA TORRES
United States District Judge